IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 8424 of 2007(C)

IA 699/2007 IN OS.260/2006 of ADDL.MUNSIFF COURT, KANNUR

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PETITIONER:

K.V.VINOD S/O.BALAKRISHNAN, AGED 42 YEARS, SREEVALSAM, P.O.CHOVVA, KANNOTHUMCHAL, KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
SMT.C.S.RAJANI

RESPONDENTS:

1. DAMAYANDHI P.K., D/O.KANNAN, AGED 59 YEARS, RESIDING AT KAKKIRIKAN HOUSE, ARAMKOTTAM, P.O. AZHIKKODE, KANNUR.

2. P.K.SHANTHA D/O.KANNAN, AGED 59 YEARS, DO. DO.

3. P.K.SATHI, D/O.KANNAN, AGED 53 YEARS, DO. DO.

4. P.K.SADANANDAN S/O.KANNAN, AGED 51 YEARS, RESIDING AT CHATTA HOUSE, P.O.CHALAD, KANNUR.

5. P.V.KOUSALYA, W/O.SUKUMARAN, AGED 55 YEARS, RESIDING AT PARUTHI VALAPPIL HOUSE, VENGARA, P.O.PAYANGADI, KANNUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 8424 of 2007 C

JUDGMENT

The petitioner is the third additional plaintiff in O.S.No.260/06 on the file of the Additional Munsiff's Court, Kannur. The suit is one for partition. The respondents resisted the suit by setting up a will executed by the predecessor in interest of the petitioner and the respondents in favour of the third defendant. The suit stood posted for trial in the special list on 13.2.2007. On that day, the petitioner filed an application to forward the will to a handwriting expert for opinion as regards the signature in the said will. The request was rejected by the court below, vide Exhibit P7 order and hence, this writ petition by the aggrieved third additional plaintiff.

2. It is contended before me by the learned counsel for the petitioner that the court below has

observed that the disputed will is of the year 1969 and is more than thirty years old and that it may not require proof of its execution under Section 90 of the Indian Evidence Act and therefore, the petitioner is highly aggrieved by such an observation. The court below, in Exhibit P7 impugned order, has stated that the parties did not desire to have the case adjourned for pre-trial steps and did not ask for advancing the case for them to persue steps in the matter.

3. In the circumstances, the court below was right in refusing to allow the prayer in the petition filed on 13.2.2007, to have the will forwarded for expert opinion, when the suit itself stood posted for trial in the special list to that day. The grievance that is urged before me by the learned counsel for the petitioner is also illusory. The court below has only observed that the will produced by the defendant is of the year 1969 and is more than thirty years old.

Consequences of the will, being thirty years old, are not at all mentioned by the Munsiff. Obviously, the court below could not say that the will is more than forty years old, because forty years had not been completed. This observation, by itself, is not sufficient for the petitioner to entertain any apprehension, especially when the court below has further observed that specific procedure is laid down for proving the will and that the defendants also submitted that they intend to prove the will through the prescribed procedure. The petitioner will be having sufficient opportunity while examining the witnesses to bring out circumstances, which will show that the will is not genuine, if at all it is not genuine and is not executed by the testator. He is at liberty to use those opportunities to establish that the will set up by the third defendant is not genuine. Exhibit P7 order, however, does not deserve to be interfered with, as the rejection of the request to

send the will for expert opinion, by filing a petition on the day, on which the suit stood posted for trial in the special list, is obviously one which could not have been entertained.

This writ petition, in the circumstances, is devoid of merit and is dismissed. In the course of trial, if the trial court feels that expert opinion is required to have the genuineness or otherwise of the will established, dismissal of this writ petition will not stand in the way of the court below forwarding the will for expert opinion.

13th March, 2007 (K.P.Balachandran, Judge)

tkv